
OPINION OF THE PUBLIC ACCESS COUNSELOR

BRENT A. WILSON,
Complainant,

v.

MSD OF STEUBEN COUNTY BOARD OF TRUSTEES,
Respondent.

Formal Complaint No.
21-FC-18

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Board of Trustees of the Metropolitan School District of Steuben County violated the Open Door Law.¹ Attorney Mark D. Scudder filed an answer on behalf of the Board. In accordance with Indiana Code § 5-14-5-10,

¹ Ind. Code § 5-14-1.5-1-8.

I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 9, 2020.

BACKGROUND

This case involves a dispute over an executive session held by the Board of Trustees of the Metropolitan School District of Steuben County (Board). The executive session in question purportedly involved discussions of litigation strategy and personnel management.

On January 27, 2021, the Board held an executive session for the noticed purpose of discussing litigation strategy in accordance with Indiana Code section 5-14-1.5-6.1(b)(2)(B). There is no dispute that the notice itself was defective.

The main contention by Brent A. Wilson (Complainant), the district's superintendent, is that the Board's discussions also involved the decision to initiate a search for a new superintendent; and thus, implying the termination of Wilson's contract. Notably, the parties have been in a legal dispute over the contract since March 3, 2020.²

Dr. Wilson's claims are evidenced by an email from the Board president to administrators stating: "Last week the School Board met in an Executive Session regarding the search for our next Superintendent to start July 1, 2021."

Dr. Wilson contends the termination of contracts and initiating a search for a new superintendent is inappropriate for

² From the information provided, there is no indication that the pending litigation directly involves the Board's executive session on January 27, 2021.

executive session. As a result, he filed his formal complaint in early February.³

For its part, the Board argues the discussion of a superintendent search is immediately germane to the legal strategy of the pending litigation, but the Board does not deny the underlying facts. While the Board acknowledges the Board president's email may be imprecise, the Board claims the only matters discussed were those appropriate for an executive session.

ANALYSIS

1. The Open Door Law

It is the intent of the Open Door Law (ODL) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-1.

Except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. Ind. Code § 5-14-1.5-3(a).

There is no dispute that the Metropolitan School District of Steuben County is a public agency for purposes of the ODL; and thus, subject to the law's requirements. *See* Ind. Code § 5-14-1.5-2. Additionally, the Board of Trustees (Board) is a governing body of the School for purposes of the ODL. *See*

³ Dr. Wilson also concludes his complaint with a statement that an upcoming meeting venue was insufficient to accommodate the public. This office does not opine on meetings that have not occurred in its formal advisory opinions and has not received any subsequent complaints.

Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

2. Executive Sessions

Under the ODL, the term “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” Ind. Code § 5-14-1.5-2(f).

There exists a heightened requirement for executive session notice and for good reason. While the law allows some latitude to a governing body to meet behind closed doors, the public in turn is entitled to specific notice as to why.

The ODL requires public notice of executive sessions to state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). Ind. Code § 5-14-1.5-6.1(d). Subsection (b), of course, lists the specific subject matters that are authorized for an executive session.

It appears as if the Board noticed the meeting properly in that discussions of strategy with respect to pending litigation is a meritorious purpose for an executive session. *See* Ind. Code § 5-14-1.5-6.1(b)(2)(B).

Accordingly, “strategy” is indeed a fairly broad term and can reasonably include potential resolutions to a case including settlements, concessions, pleadings, and motions. Any course of action germane to pending litigation is fair game for “strategizing.”

The Board is not in violation of the Open Door Law for discussing ways forward in a case. This office agrees with the Board that developments in a case are ripe for discussion under the “litigation strategy” executive session.

The issue becomes whether the Board took substantive final action behind closed doors that should not have taken place in an executive session. There is no question that the date in which the superintendent’s contract expires is very much up in the air and in dispute in the pending litigation.

This office scrutinizes issues surrounding executive sessions closely as they are the only opportunities to exclude the public from public business. Some of those opportunities are completely justified. Some can be abused for the sake of convenience or to avoid uncomfortable confrontation.

In this case, the email from the Board president to administrators speaks for itself. It gives the unequivocal and express impression that the Board decided to initiate a superintendent search:

“Last week the School Board met in an Executive Session regarding the search for our next Superintendent. Your names came up in our discussions as MSD employees that we would like to be involved in our next Executive Session...”

The Board president presumably speaks for the entirety of the Board. It is a dubious position that this is simply “imprecise” wording on the part of his message, as the Board suggests. It is clear the Board forged a path forward on the search for a new superintendent, identifying future stakeholders, and plotting a future executive session; and they did so behind closed doors. This goes well beyond discussion of

strategy with respect to pending litigation. This is substantive public business. The Board should have taken action to initiate a search in a public meeting.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Board of Trustees of the Metropolitan School District of Steuben County violated the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the printed name.

Luke H. Britt
Public Access Counselor